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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/026,372

12/24/2001

Jean Marc Paulin

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8034

29858

7590

08/07/2007

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EXAMINER

ORTIZ, BELIX M

ART UNIT

PAPER NUMBER

2164

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/026,372	PAULIN, JEAN MARC	
	Examiner	Art Unit	
	Belix M. Ortiz	2164	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-10 and 12-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-10 and 12-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Remarks***

1. In response to communications files on 19 April, 2007. Therefore, claims 1-6, 8-10, and 12-14 are presently pending in the application.

2. In view of the Appeal brief filed on April 4, 2007, PROSECUTION IS HEREBY REOPENED. A new ground of rejection *is* set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1-6; 9-10; and 12-14 are rejected under 35 U.S.C. 103(a) (Eff. Filing date of application 12/24/2001) as being unpatentable over Addante (US pub. 2002/0004733) (Eff. Filing date of application: 5/7/2001) in view of Reps et al. (U.S. patent 6,070,190) (Eff. Filing date of application 5/11/1998).

As to claim 1, Addante teaches

at a first computer couple to the network (see figure 1, character 100);

a user performing one or more steps as part of a transaction involving use of the service, the one or more steps being performed according to one or more parameters (see paragraphs 3 and 31);

transaction recorder software residing on the first computer recording the one or more steps and the one or more parameters in a transaction data file (see abstract and paragraphs 8 and 28); and

sending the transaction data file from the first computer to a second computer couple to the network (see figure 1, characters 100, 101, and 106);

at the second computer, service software residing on the second computer:

identifying the one or more steps and the one or more parameters in the transaction data file (see paragraph 22); and

executing the one or more steps using the one or more parameters to thereby replicate the transaction performed by the user (see paragraphs 22, 31, and 38).

Addante does not teach a method for determining a level of service for a server in a network, and

determining the level of service for the server based on the.

Reps et al. teaches client-based application availability and response monitoring and reporting for distributed computing environments (see abstract), in which he teaches a method for determining a level of service for a server in a network, (see column 2, lines 25-31 and column 4, lines 12-15), and

determining the level of service for the server based on the executing (see lines 25-35; column 4, lines 12-15; and column 23, lines 35-39).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Addante by the teaching of Reps et al., because a method for determining a level of service for a server in a network, and determining the level of service for the server based on the, would enable the method because, “The server process monitor program provides information to the network administrator at the granularity level of each client's process within the client-server network”, (see Reps et al., column 4, lines 12-15).

As to claim 2, Addante as modified teaches the method further comprising aborting the step of retrieving when a timeout threshold is exceeded (see Addante, paragraph 28).

As to claim 3, Addante as modified teaches wherein the parameters comprise an address and port of the information resource (see Addante, paragraph 24).

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As to claim 4, Addante as modified teaches the method further comprising generating at the first computer conditional logic used to instruct service software at the second computer as to a service level code to return based on the service software's time to retrieve the information resource (see Addante, paragraphs 3 and 24).

As to claim 5, Addante as modified teaches wherein the generating conditional logic comprises generating conditional logic defining service levels of GOOD, MARGINAL, and FAILED (see Reps et al., column 2, lines 28-34; column 3, lines 39-42; and column 4, lines 5-14).

As to claim 6, Addante as modified teaches wherein recording comprises recording the step information in a hierarchy, each step comprising an entry in the hierarchy with the data in the transaction data file being a top level of the hierarchy (see Reps et al., column 2, lines 66-67; column 3, lines 1-3; and column 5, lines 42-46).

As to claim 9, Addante as modified teaches the method further comprising calculating an amount of time to execute the first step (see Addante, claim 88).

As to claim 10, Addante as modified teaches wherein the step of determining the level of service comprises determining the level of service based on the amount of time required to execute the first step (see Reps et al., column 17, lines 6-17).

As to claim 12, Addante as modified wherein the one or more steps include retrieving an information resource hosted on the server (see Reps et al., column 4, lines 15-32 and column 9, lines 1-23).

As to claim 13, Addante as modified wherein the transaction recorder software determines a level of service at the first computer based on the one or more steps performed by the user, and wherein generating the first conditional logic is based on the determined level of service at the first computer (see Reps et al., column 2, lines 25-35 and column 4, lines 12-15).

As to claim 14, Addante as modified wherein the user performing one or more steps comprises the user performing a plurality of steps including a first step and one or more subsequent steps (see Reps et al., figures 4 and 13).

5. Claim 8 are rejected under 35 U.S.C. 103(a) (Eff. Filing date of application 12/24/2001) as being unpatentable over Addante (US pub. 2002/0004733) (Eff. Filing date of application: 5/7/2001) in view of Reps et al. (U.S. patent 6,070,190) (Eff. Filing date of application 5/11/1998) as applied to claim 1-6, 9-10, and 12-14 above, and further in view of Marullo et al. (U.S. patent 6,044,398) (Eff. Filing data of application 11/21/1997).

As to claim 8, Addante does not teach the method further comprising, at the second computer:

identifying one or more subsequent steps in the transaction data file;

executing the one or more subsequent steps by attempting to retrieve information resources identified by the subsequent one or more steps; and

returning respective levels of service for respective servers hosting the respective information resources identified in the one or more steps.

Marullo et al. teaches virtual dynamic browsing system and method for automated web server and testing (see abstract), in which he teaches the method further comprising, at the second computer:

identifying one or more subsequent steps in the transaction data file (see column 30, lines 54-57);

executing the one or more subsequent steps by attempting to retrieve information resources identified by the subsequent one or more steps (see column 3, lines 10-12); and

returning respective levels of service for respective servers hosting the respective information resources identified in the one or more steps (see column 6, lines 30-37).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Addante by the teaching of Marullo et al., because the method further comprising, at the second computer:

identifying one or more subsequent steps in the transaction data file;

executing the one or more subsequent steps by attempting to retrieve information resources identified by the subsequent one or more steps; and

returning respective levels of service for respective servers hosting the respective information resources identified in the one or more steps, would enable the method to



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retrieve the next step the transaction needs to perform, to finish with the transaction of the user and depending on the execution of the transaction is the level of service.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Belix M. Ortiz whose telephone number is 571-272-4081. The examiner can normally be reached on moday-friday 9am-5pm.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

bmo

August 2, 2007

  
CHARLES RONES  
SUPERVISORY PATENT EXAMINER